

Miranda v. Delaware State Lottery Comm.

C.A. No. K10A-10-008 WLW

August 1, 2011

This case is an appeal from a decision of the Delaware State Lottery Commission. For the foregoing reasons, the decision is affirmed.

FACTS

Nicholas Miranda (“Appellant”) was hired to work as a table gaming supervisor at the Harrington Slots. Appellant was hired despite the fact that he had been convicted of three misdemeanors for possession or use of cocaine. Appellant disclosed the convictions on his application for employment. The most recent conviction was entered in 2004.

The Division of Gaming Enforcement continued to investigate Appellant’s background after he was hired. The investigation included a credit check, which showed that Appellant was behind on payments and that his house was in foreclosure. After reviewing the investigation’s findings, the Director of the State Lottery Commission (“the Director”) decided to revoke Appellant’s gaming licence. The decision resulted in Appellant losing his job because table gaming employees must hold a gaming licence.

PROCEDURAL HISTORY

The Delaware State Lottery Commission (“the Commission”) affirmed the Director’s decision. It determined that the combination of a history of hard drug abuse and current financial problems could make Appellant unreliable in a job where he would be required to handle large volumes of money. The Commission further determined that Appellant failed to meet his burden of proof, on appeal, which would require him to show, by clear and convincing evidence, that he was fit for the position

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despite the Director's findings.

Standard of Review

The Superior Court has jurisdiction to hear appeals from the Delaware Lottery Commission under the Administrative Procedures Act.¹ The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted.² The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.³

DISCUSSION

The question presented is whether there is substantial evidence on the record to support the Commission's decision to uphold the denial/revocation of Appellant's gaming licence. Under Title 29, Section 4830(e)(8), the Director has broad discretion to deny or revoke gaming licences if, in his opinion, there is anything about an applicant—including but not limited to reputation, habits, and associations—that may pose a threat to the public interest or the reputation or effective control of the lottery.⁴ An applicant may prevent the denial or revocation if he can prove his rehabilitation

¹ 29 Del. C. § 4830(j)(3).

² 29 Del. C. § 10142.

³ *Id.*

⁴ 29 Del. C. 4830(e)(8).

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by clear and convincing evidence.⁵ The code provides seven factors to consider when determining whether an applicant has met that demanding burden of proof:

(1) The conviction accrued more than 5 years from the date of application; (2) the nature and duties of the position applied for; (3) the nature and seriousness of the offense or conduct; (4) the circumstance under which the offense or conduct occurred; (5) the age of the applicant or licensee when the offense or conduct was committed; (6) whether the conduct was isolated or repeated; (7) any evidence of rehabilitation including, without limitation, good conduct in prison or in the community; successful completion of court-ordered probation; counseling or medical treatment received; and the recommendations of persons who have had the person under their supervision.⁶

Three of the factors (numbers 1, 3, and 7) support Appellant's position. All three of Appellant's convictions were for relatively minor, misdemeanor offenses. The most recent conviction was entered in 2004, which is obviously more than five years before Appellant filed his application for a gaming licence in 2010. Additionally, Appellant has bolstered his argument by proffering character references from friends, family, and the executive director of a local charity where Appellant volunteers his time.

However, the remaining factors weigh in favor of the Commission. Appellant was hired as a table game supervisor ("pit boss") at one of Delaware's state-sanctioned casinos. The job would require Appellant to handle large volumes of

⁵ 29 Del. C. 4830(f).

⁶ 29 Del. C. § 4830(d)(1)-(7).

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money on a daily basis. It is reasonable that the Commission would be concerned about employing Appellant in that position if it found that his crimes and bad credit suggest poor decision-making or questionable character.

It is also problematic that Appellant committed repeated crimes—resulting in three convictions. In fact, Appellant testified that he was addicted to illegal drugs for much of his adult life. Appellant should be commended if he has truly overcome his lifelong addiction to crack cocaine. However, it is not unreasonable for the Commission to be concerned that a person with such a history of addiction might relapse. This ties into another factor. Appellant committed his crimes as an adult, so he is not entitled to mitigation for the indiscretions of youth.

Appellant contends that there were various unhappy circumstances—such as the death of his father—surrounding his drug use. Although that may be true, the Court does not find such explanations or excuses to amount to mitigating circumstances. There are many hardships in life. The Commission could reasonably fear that an individual who has previously resorted to drugs in response to difficult circumstances would do so again.

Under these facts, it does not appear that the Commission abused its discretion. That is not to say that Appellant is a dishonest or bad person. However, the Commission has broad discretion to uphold the integrity of gaming, and Appellant has a demanding burden of proof on appeal. The Court finds that he has not shown

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his rehabilitation or fitness for the position by *clear and convincing evidence*.⁷

CONCLUSION

For the foregoing reasons, the decision of the Delaware State Lottery Commission is **AFFIRMED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Mr. Nicholas G. Miranda, Jr., *pro se*

Robert W. Willard, Esquire

File

⁷ 29 Del. C. § 4830(d). Note that “clear and convincing evidence” is a much more difficult standard of proof than the ordinary preponderance of the evidence standard applied in most civil contexts. It is not enough for Appellant to show that he is *probably* reformed and qualified for the position.